

TODD A. NOAH (SBN 152328)
PAUL K. TOMITA (SBN 188096)
DERGOSITS & NOAH LLP
Four Embarcadero Center, Suite 1450
San Francisco, California 94111
Tel: (415) 705-6377
Fax: (415) 705-6383
E-mail: tnoah@dergnoah.com
ptomita@dergnoah.com

Attorneys for Plaintiff MMJK, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MMJK, INC.)	Case No. C 07 03236 BZ
Plaintiff,)	
)	DECLARATION OF TODD A. NOAH IN
)	SUPPORT OF MMJK, INC.'S MOTION
vs.)	TO DISMISS THE COMPLAINT
)	PURSUANT TO FED.R.CIV.P. 41(a)(2)
)	AND THE COUNTERCLAIMS
)	PURSUANT TO FED.R.CIV.P. 12(b)(1)
ULTIMATE BLACKJACK TOUR, LLC)	
Defendant.)	

I, Todd A. Noah, declare under penalty of perjury that the following is true and correct:

1. I am a member of the law firm Dergosits & Noah LLP counsel of record for plaintiff MMJK, Inc. ("MMJK"). I submit this declaration in support of MMJK's motion to dismiss the complaint pursuant to Fed.R.Civ.P. 41(a)(2) and the counterclaims pursuant to Fed.R.Civ.P. 12(b)(1). I have personal knowledge of the facts contained herein and, if called as a witness, I could and would testify competently thereto.

2. On August 23, 2007, I received a telephone call from Ultimate Blackjack Tour, LLC's ("UBT") counsel, Matthew Steinberg, offering to settle the case. Mr. Steinberg indicated that UBT would be willing to stipulate to a dismissal of case with each party bearing its own attorneys fees and

1 costs if MMJK would agree to provide UBT with a release from liability now and in the future with
2 respect to UBT's products and services.

3 3. On September 4, 2007, I called Mr. Steinberg and informed him that MMJK would not
4 agree to settle the case on UBT's terms since MMJK would not agree to release UBT for future liability
5 based upon MMJK patents that may be obtained in the future. Mr. Steinberg then indicated that UBT
6 would prepare the case for summary judgment of non-infringement.

7 4. On September 14, 2007, I sent Mr. Steinberg an email indicating that MMJK was
8 reconsidering UBT's settlement proposal, but needed time to review the transcript from the preliminary
9 injunction hearing before making that decision since it had not received the transcript at that time.
10 Attached as Exhibit A is a true and correct copy of my September 14, 2007 email to Mr. Steinberg.

11 5. On September 26, 2007, I sent Mr. Steinberg an email informing him that MMJK
12 reconsidered its position and was willing to dismiss the case with prejudice. I included a draft Stipulated
13 Dismissal. Attached as Exhibit B is a true and correct copy of my September 26, 2007 email to Mr.
14 Steinberg with attachment.

15 6. Later that day, Mr. Steinberg responded by email and informed me that UBT would not
16 agree to dismiss the case unless MMJK would agree to release UBT from all liability now or in the
17 future with respect to UBT's products and services. Attached as Exhibit C is a true and correct copy of
18 Mr. Steinberg's September 26, 2007 email.

19 7. Attached as Exhibit D is a true and correct copy of my October 2, 2007 letter to Mr.
20 Steinberg with attachment.

21 8. At the time of the filing of MMJK's motion to dismiss, UBT had not responded to
22 MMJK's request to stipulate to the dismissal of this case.

23
24 Executed this 3rd day of October, 2007, at San Francisco, California.

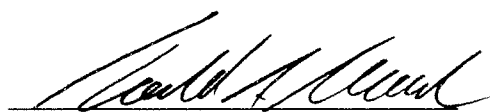
25
26
27 
28 Todd A. Noah

EXHIBIT A

Todd Noah

From: Todd Noah
Sent: Friday, September 14, 2007 4:14 PM
To: 'SteinbergM@GTLAW.com'
Subject: MMJK v. UBT

Matt:

I just wanted to let you know that I had some further discussions with MMJK about UBT's settlement proposal and they are reconsidering it. However, they have informed me that they cannot make any decisions until after they have had the opportunity to review the transcript from the preliminary injunction hearing so that they can fully evaluate the case going forward. Unfortunately, we are first getting a copy of the transcript today at around 5:30 p.m. MMJK fully intends to review the transcript upon receipt and I will get back to you next week with my client's decision regarding the settlement of this case.

In the meantime, if you have any questions, please contact me.

Regards,

Todd A. Noah
Dergosits & Noah LLP
Four Embarcadero Center, Suite 1450
San Francisco, California 94111
Tel. (415) 705-6382
Fax: (415) 705-6383
tnoah@dergnoah.com

THE INFORMATION CONTAINED IN THIS E-MAIL MESSAGE IS CONFIDENTIAL
AND MAY ALSO CONTAIN PRIVILEGED ATTORNEY-CLIENT INFORMATION
OR WORK PRODUCT. THE INFORMATION IS INTENDED FOR THE INDIVIDUAL
TO WHOM IT IS ADDRESSED. IF YOU ARE NOT THE INTENDED RECIPIENT,
OR THE PERSON RESPONSIBLE FOR DELIVERING IT TO THE INTENDED
RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY USE, DISSEMINATION,
DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY
PROHIBITED. IF YOU HAVE RECEIVED THIS FACSIMILE IN ERROR, PLEASE
IMMEDIATELY NOTIFY THE SENDER BY E-MAIL, AND DELETE
THE ORIGINAL TRANSMISSION FROM YOUR SYSTEM. THANK YOU.

10/2/2007

EXHIBIT B

Todd Noah

From: Todd Noah
Sent: Wednesday, September 26, 2007 10:16 AM
To: 'SteinbergM@GTLAW.com'
Subject: RE: MMJK v. UBT
Attachments: Dismissal.doc

Matt:

After further consideration, MMJK has decided to dismiss the case. To that end, I have attached a draft Stipulated Dismissal. If it is acceptable, I will file it with the court. Please let me know.

Regards,

Todd

From: SteinbergM@GTLAW.com [mailto:SteinbergM@GTLAW.com]
Sent: Friday, September 14, 2007 4:25 PM
To: Todd Noah
Cc: smillar@playubt.com
Subject: RE: MMJK v. UBT

ok. Alma, please call 415 522 2103 and order the transcript of the August 15 hearing as well.

Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

The information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. To reply to our email administrator directly, please send an email to postmaster@gtlaw.com.

From: Todd Noah [mailto:tnoah@dergnoah.com]
Sent: Friday, September 14, 2007 4:14 PM
To: Steinberg, Matthew (Shld-LA-LT)
Subject: MMJK v. UBT

Matt:

I just wanted to let you know that I had some further discussions with MMJK about UBT's settlement proposal and they are reconsidering it. However, they have informed me that they cannot make any decisions until after they have had the opportunity to review the transcript from the preliminary injunction hearing so that they can fully evaluate the case going forward. Unfortunately, we are first getting a copy of the transcript today at around 5:30

10/2/2007

p.m. MMJK fully intends to review the transcript upon receipt and I will get back to you next week with my client's decision regarding the settlement of this case.

In the meantime, if you have any questions, please contact me.

Regards,

Todd A. Noah
Dergosits & Noah LLP
Four Embarcadero Center, Suite 1450
San Francisco, California 94111
Tel. (415) 705-6382
Fax: (415) 705-6383
tnoah@dergnoah.com

THE INFORMATION CONTAINED IN THIS E-MAIL MESSAGE IS CONFIDENTIAL
AND MAY ALSO CONTAIN PRIVILEGED ATTORNEY-CLIENT INFORMATION
OR WORK PRODUCT. THE INFORMATION IS INTENDED FOR THE INDIVIDUAL
TO WHOM IT IS ADDRESSED. IF YOU ARE NOT THE INTENDED RECIPIENT,
OR THE PERSON RESPONSIBLE FOR DELIVERING IT TO THE INTENDED
RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY USE, DISSEMINATION,
DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY
PROHIBITED. IF YOU HAVE RECEIVED THIS FACSIMILE IN ERROR, PLEASE
IMMEDIATELY NOTIFY THE SENDER BY E-MAIL, AND DELETE
THE ORIGINAL TRANSMISSION FROM YOUR SYSTEM. THANK YOU.

10/2/2007

TODD A. NOAH (SBN 152328)
PAUL K. TOMITA (SBN 188096)
DERGOSITS & NOAH LLP
Four Embarcadero Center, Suite 1450
San Francisco, California 94111
Tel: (415) 705-6377
Fax: (415) 705-6383
E-mail: tnoah@dergnoah.com
ptomita@dergnoah.com

Attorneys for Plaintiff MMJK, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MMJK, INC.

Plaintiff,

vs.

ULTIMATE BLACKJACK TOUR, LLC

Defendant.

Case No. C 07 03236 BZ

**STIPULATION AND ORDER RE
DISMISSAL WITH PREJUDICE**

MMJK, Inc. and Ultimate Blackjack Tour, LLC ("the Parties") hereby stipulate, through their respective counsel of record, that this action be dismissed with prejudice. Each party will bear its own attorneys' fees and costs.

IT IS SO STIPULATED.

Dated: September 26, 2007

DERGOSITS & NOAH LLP

By: /s/ Todd A. Noah

Todd A. Noah

Four Embarcadero Center, Suite 1450
San Francisco, CA 94111
Telephone: 415-705-6377
Facsimile: 415-705-6383

Attorneys for Plaintiff MMJK, INC.

1 Dated: September 26, 2007

GREENBERG TRAURIG, LLP

2
3
4 By: /s/ Matthew S. Steinberg
Matthew S. Steinberg

5 2450 Colorado Avenue, Suite 400 East
6 Santa Monica, California 90404
7 Telephone: (310) 586-7700
Facsimile: (310) 586-7800

8 Attorneys for Defendant
9 ULTIMATE BLACKJACK TOUR LLC

10 I attest under penalty of perjury that concurrence in the filing of this document has been
11 obtained from Matthew S. Steinberg.

12 /s/ Todd A. Noah

13
14 PURSUANT TO STIPULATION, IT IS SO ORDERED.
15

16
17 Dated: September 26, 2007

18 Hon. Bernard Zimmerman
United States Magistrate Judge

EXHIBIT C

Todd Noah

From: SteinbergM@GTLAW.com
Sent: Wednesday, September 26, 2007 3:22 PM
To: Todd Noah
Subject: RE: MMJK v. UBT

Todd, you do not have my authority to file this stipulation. Our offer required that MMJK release UBT from all liability now or in the future with respect to our products and services. Until a full settlement agreement is reached and appropriate documentation is executed we will not stipulate to a dismissal with each side bearing its own costs. Of course, you are free to dismiss the case unilaterally but, in the absence of a full settlement agreement, we will seek all relief to which we would be entitled as the prevailing party. Please advise whether your client is willing to enter into the comprehensive settlement agreement we are seeking. If so, I will prepare the settlement draft. Please do not represent to the court that we are stipulating to this dismissal. Please advise of your client's position as soon as you have authority.

From: Todd Noah [mailto:tnoah@dergnoah.com]
Sent: Wednesday, September 26, 2007 10:16 AM
To: Steinberg, Matthew (Shld-LA-LT)
Subject: RE: MMJK v. UBT

Matt:

After further consideration, MMJK has decided to dismiss the case. To that end, I have attached a draft Stipulated Dismissal. If it is acceptable, I will file it with the court. Please let me know.

Regards,

Todd

From: SteinbergM@GTLAW.com [mailto:SteinbergM@GTLAW.com]
Sent: Friday, September 14, 2007 4:25 PM
To: Todd Noah
Cc: smillar@playubt.com
Subject: RE: MMJK v. UBT

ok. Alma, please call 415 522 2103 and order the transcript of the August 15 hearing as well.

Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

The information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. To reply to our email administrator directly, please send an email to postmaster@gtlaw.com.

10/2/2007

EXHIBIT D

DERGOSITS & NOAH LLP

ATTORNEYS AT LAW

FOUR EMBARCADERO CENTER, SUITE 1450
SAN FRANCISCO, CALIFORNIA 94111

TELEPHONE: (415) 705-6377
FACSIMILE: (415) 705-6383
www.dergnoah.com

Todd A. Noah
Direct Dial: (415) 705-6382
E Mail: tnoah@dergnoah.com

PATENTS, TRADEMARKS,
COPYRIGHTS, TRADE SECRETS,
LITIGATION AND COUNSELING

October 2, 2007

VIA EMAIL

Matthew S. Steinberg, Esq.
Greenberg Traurig, LLP
2450 Colorado Avenue, Suite 400 East
Santa Monica, California 90404

Re: *MMJK, Inc. v. Ultimate Blackjack Tour, LLC*
Civil Action No. C 07-03236 BZ
Our Ref. No.: 765.06

Dear Mr. Steinberg:

Today, MMJK filed the Declaration of Jason Kellerman which provides UBT a covenant not to sue for infringement of the '154 patent. This covenant not to sue effectively ends this case, including UBT's counterclaims for declaratory judgment of non-infringement, invalidity and unenforceability. In particular, this covenant not to sue divests the court of subject matter jurisdiction over UBT's declaratory judgment claims. *See Benitec Australia, Ltd. v. Nucleonics, Inc.*, 495 F.3d 1340 (Fed. Cir. 2007); *Amana Refrigeration, Inc. v. Quadlux, Inc.*, 172 F.3d 852 (Fed. Cir. 1999); *Super Sack Manufacturing Corp. v. Chase Packaging Corp.*, 57 F.3d 1054 (Fed. Cir. 1995).

In view of the foregoing, MMJK hereby requests that UBT stipulate to a dismissal of the action, including the counterclaims. We are attaching a draft stipulation for your review. Please provide us with UBT's response by 5:00 p.m. on Wednesday, October 3, 2007. If UBT refuses to stipulate, MMJK will file a motion to dismiss MMJK's complaint pursuant to Fed.R.Civ.P. 41(a)(2) and UBT's counterclaims for declaratory judgment for lack of subject matter jurisdiction pursuant to Fed.R.Civ.P. 12(b)(1).

We look forward to your prompt response.

Very truly yours,

DERGOSITS & NOAH LLP



Todd A. Noah

TAN:mo

Cc: Jason B. Kellerman (w/encl.)

TODD A. NOAH (SBN 152328)
PAUL K. TOMITA (SBN 188096)
DERGOSITS & NOAH LLP
Four Embarcadero Center, Suite 1450
San Francisco, California 94111
Tel: (415) 705-6377
Fax: (415) 705-6383
E-mail: tnoah@dergnoah.com
ptomita@dergnoah.com

Attorneys for Plaintiff MMJK, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MMJK, INC.

Plaintiff,

vs.

ULTIMATE BLACKJACK TOUR, LLC

Defendant.

Case No. C 07 03236 BZ

**STIPULATION AND ORDER RE
DISMISSAL WITH PREJUDICE**

MMJK, Inc. and Ultimate Blackjack Tour, LLC ("the Parties") hereby stipulate, through their respective counsel of record, that this action be dismissed with prejudice. Each party will bear its own attorneys' fees and costs.

IT IS SO STIPULATED.

Dated: October 2, 2007

DERGOSITS & NOAH LLP

By: _____
Todd A. Noah

Four Embarcadero Center, Suite 1450
San Francisco, CA 94111
Telephone: 415-705-6377
Facsimile: 415-705-6383
Attorneys for Plaintiff MMJK, INC.

1 Dated: October 2, 2007

GREENBERG TRAURIG, LLP

2
3
4 By: _____
Matthew S. Steinberg

5 2450 Colorado Avenue, Suite 400 East
6 Santa Monica, California 90404
7 Telephone: (310) 586-7700
8 Facsimile: (310) 586-7800

9 Attorneys for Defendant
10 ULTIMATE BLACKJACK TOUR LLC

11 I attest under penalty of perjury that concurrence in the filing of this document has been
12 obtained from Matthew S. Steinberg.

13 _____
14
15 PURSUANT TO STIPULATION, IT IS SO ORDERED.

16
17 Dated: October 2, 2007

18 _____
Hon. Bernard Zimmerman
United States Magistrate Judge